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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL RICHARD LYNCH AND
STEPHEN KEITH CHAMBERLAIN

Defendants.

CASE NO. 3:18-cr-00577-CRB

**Defendant Stephen Chamberlain's Motion
in Limine to Preclude Admission of
Evidence in Violation of Confrontation
Clause**

Pretrial Conference: February 21, 2024
Trial Date: March 18, 2024

Assigned to Hon. Charles R. Breyer

I. INTRODUCTION AND BACKGROUND

Defendant Stephen Chamberlain moves *in limine* for an order precluding the admission of Defendant Michael Richard Lynch's statements made during his written and oral testimony in the related UK civil action unless and until the Government identifies with specificity the statements it seeks to introduce so that Mr. Chamberlain can evaluate whether there are confrontation clause and spillover prejudice issues. The Government should be required to do so at least thirty days before trial so that Mr. Chamberlain has a fair opportunity to review any such statements and challenge their admissibility.

Dr. Lynch and Mr. Chamberlain were indicted on November 29, 2018 for, *inter alia*, engaging in a "fraudulent scheme to deceive purchasers and sellers of Autonomy securities about the true performance of Autonomy's business, its financial performance and condition, the nature and composition of its products, revenue and expenses and its prospects for growth." ECF No. 1. In 2018 and 2019, Dr. Lynch provided written and oral testimony in connection with a civil lawsuit brought by HP's affiliates against him and Sushovan Hussain, the former CFO of Autonomy, in the United Kingdom High Court of Justice ("UK Civil Action"). As the Court knows, the subject matter of that action was closely related to the subject matter of this case. But Mr. Chamberlain was not a party to the UK Civil Action and did not have an opportunity to cross-examine Dr. Lynch. In the most recent version of its exhibit list, the Government marked as Exhibits 12994 to 13016 the transcripts of Dr. Lynch's entire testimony in the UK Civil Action. The Government has not identified which statements by Dr. Lynch it intends to introduce at trial. This creates a daunting problem for Mr. Chamberlain, as these exhibits consist of thousands of pages of Dr. Lynch's statements made under oath for the purpose of defending himself against allegations pertaining to the subject matter of this case.

The Court should preclude the Government from introducing any testimonial statements by Dr. Lynch absent a timely disclosure of specific statements that it does not believe would violate Mr. Chamberlain's Confrontation Clause rights (and a reasonable opportunity for Mr. Chamberlain to challenge the Government's position).

1 **II. ARGUMENT**

2 The Sixth Amendment’s Confrontation Clause provides that “[i]n all criminal
3 prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against
4 him.” U.S. Const. amend. VI. The Supreme Court in *Crawford v. Washington* established the rule
5 that “[w]here testimonial evidence is at issue, . . . the Sixth Amendment demands what the
6 common law required: unavailability and a prior opportunity for cross examination. *Crawford v.*
7 *Washington*, 541 U.S. 36, 68 (2004). A statement is “testimonial” if the “primary purpose of the
8 interrogation is to establish or prove past events potentially relevant to later criminal prosecution.”
9 *Davis v. Washington*, 547 U.S. 813, 822-23 (2006). Testimony under oath—like the written and
10 oral testimony Dr. Lynch provided in the UK Civil Action—falls within the “core class of
11 ‘testimonial’ evidence.” *Id.* at 51-53.

12 In this case, the Government intends to introduce Dr. Lynch’s sworn witness statements
13 and sworn testimony made in connection with the UK Civil Action. Such statements are literally
14 testimonial and were made with the primary purpose to “establish or prove past events potentially
15 relevant to later criminal prosecution.” *Davis*, 547 U.S. at 822-23. Mr. Chamberlain was not a
16 party to the related UK Civil Action and did not have an opportunity to cross examine Dr. Lynch.
17 Accordingly, such statements are inadmissible under the Confrontation Clause against Mr.
18 Chamberlain unless and until Dr. Lynch testifies.

19 Because the Confrontation Clause secures a constitutional right, the government cannot
20 render the statements admissible using normal hearsay exceptions. *Crawford*, 541 U.S. at 61
21 (“Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth
22 Amendment’s protection to the vagaries of the rules of evidence.”); *see also United States v.*
23 *Baines*, 486 F. Supp. 2d 1288, 1299-1300 (D.N.M. 2007) (testimonial statements inadmissible
24 under Confrontation Clause even though statements fell within co-conspirator exception to
25 hearsay).

26 Additionally, even if Dr. Lynch’s prior testimony would theoretically be admissible against
27 Dr. Lynch, that testimony may nonetheless be inadmissible because of the potential spillover
28 prejudice that would result against Mr. Chamberlain, against whom the testimony would not be

1 admissible. *Bruton v. United States*, 391 U.S. 123 (1968); *Hayes v. Ayers*, 632 F.3d 500, 514 (9th
2 Cir. 2011) (“*Bruton* addressed the ‘great’ risk that a jury could not or would not limit its
3 consideration as instructed under the circumstances of that case, where the consequences of its
4 failure to do so would be ‘vital’ for the nonconfessing codefendant.”). At this point, because the
5 government has not identified the specific statements of Dr. Lynch it intends to introduce, the
6 Court should protect Mr. Chamberlain’s constitutional rights by precluding the government from
7 introducing them. If the Government believes that the prejudicial effect of introducing Dr. Lynch’s
8 testimonial statements can be adequately addressed through limiting instructions, it should be
9 ordered to identify the specific statements it intends to introduce sufficiently ahead of trial to
10 permit Mr. Chamberlain to evaluate, assess, and, as necessary, litigate those risks.

11 Absent such disclosure, the Court should prohibit the Government from introducing *any*
12 testimonial statements by Dr. Lynch in order to avoid preventable violations of Mr. Chamberlain’s
13 Confrontation Clause rights that cannot be cured by an appropriate jury instruction. Nor should the
14 Court permit the Government to address the admissibility of such statements “on the fly”—these
15 are complicated issues that implicate Mr. Chamberlain’s constitutional rights, and the Government
16 should not be allowed to force Mr. Chamberlain to address each testimonial statement
17 immediately after the Government first proposes its introduction.

18 **III. CONCLUSION**

19 For these reasons, the Court should grant Mr. Chamberlain’s Motion in Limine to Preclude
20 Evidence in Violation of the Confrontation Clause and preclude the Government from introducing
21 any statements by Dr. Lynch made in connection with the UK Civil Action. In the alternative, the
22 Court should order the Government to identify with specificity each statement of Dr. Lynch made
23 in connection with the UK Civil Action that it intends to introduce at trial no less than 30 days
24 before trial begins, in order to give Mr. Chamberlain a fair opportunity to challenge their
25 admissibility on a case-by-case basis.

1 DATED: January 17, 2024

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4 By: /s/ Gary S. Lincenberg

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